

**From:** Eric Swanson  
**To:** Microsoft ATR  
**Date:** 12/14/01 6:20pm  
**Subject:** Microsoft Antitrust Proposed Final Judgement

VIA ELECTRONIC MAIL

TO: Renata Hesse, Trial Attorney  
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FROM: Eric Swanson  
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REGARDING: Microsoft Antitrust Proposed Final Judgement

Dear Renata Hesse and All Those It May Concern:

I am writing as a concerned citizen to register my comments on the PFJ now being considered in the Microsoft antitrust case currently before Judge Colleen Kollar-Kotelly of the US District Court in the District of Columbia.

As a technology consultant, an expert implementor of both Microsoft's and other technology platforms, and a 20-year veteran in information technology, I believe the proposed settlement would be completely ineffective in correcting the harm Microsoft has done and continues to do to the computer industry overall. I won't belabor the point of how Microsoft's practices have limited my choices as a technology consumer -- after all, their misdeeds have already been proved -- but I will comment briefly on what I believe is wrong with the proposal.

First, the requirement that Microsoft disclose necessary software interfaces for the purpose of allowing competitors to develop network products and middleware that work with Microsoft systems may be well intentioned, but appears entirely toothless. This appears to require only that Microsoft disclose these interfaces upon release of the operating system that uses them. This still leaves a period of months or years when Microsoft internal developers will be aware of planned interfaces and can develop for them without competition. By the time external competitors catch up -- perhaps six to eighteen months later

-- Microsoft could be nearly ready with another new OS release, complete with another window of advantage. To be effective, I believe this measure must require that Microsoft release such interface information even as it is being developed, so that outside developers can begin developing with accurate specifications at the same time it becomes practical for Microsoft developers to begin.

Second, the idea that Microsoft should be allowed any role in selecting the Technical Committee that will oversee its compliance (much less the very substantial role proposed) seems patently ridiculous. Any body that oversees compliance should be appointed by the Court, and selected based on technical skill, legal acumen, and a real understanding of how Microsoft's previous actions have caused harm. I endorse appointing a single special master to oversee this process, but at the very least any committee should be appointed by the presiding judge -- or at least somebody other than a proven antitrust violator.

Third, the proposal does not define to my satisfaction how one finds whether Microsoft is "retaliating" against a competitor. As written, it seems to require that a court proceeding determine Microsoft's intent in order that they be held responsible. To me, this seems like a recipe for more years-long bouts of legal wrangling. Instead, I believe that biased treatment plus an identified motive for Microsoft should automatically be construed as retaliation unless Microsoft can prove otherwise. For example, if Microsoft changes some licensing terms for a competitor that recently started shipping systems with Linux instead of Windows, that change in terms would be automatically taken as "retaliation" -- the burden shifts to Microsoft to prove conclusively that the change was not retaliatory.

I have quite a few other disagreements with the proposed judgement, but there are people far more qualified than I to expand upon them. I echo most of the sentiments of Attorneys General Bill Lockyer and Tom Miller, and many of the non-Microsoft industry leaders who have spoken about this issue. In short, I recommend taking a much harder line against a company that has shown not only violation of, but complete contempt for, the antitrust laws of our nation. If we fail to contain this threat, Microsoft and other large companies will be sent a terribly permissive message. Please don't let this happen.

Sincerely,

Eric Swanson (via email: [swanson@mooselessness.com](mailto:swanson@mooselessness.com))